IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23256 of 2007(R)

OPEA.374/2006 of D.C. & SESSIONS COURT, ERNAKULAM
OPEP.9/2005 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER:

PROF. JOSE AUGUSTINE, AGED 56,
S/O. LATE M.J.AUGUSTINE, NEDUMKALLEL,
KALLOORKAD P.O.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

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1. SRI. GEORGE FRANCIS, AGED 46,
S/O. LATE FRANCIS, THEKKEKARA HOUSE,
THAZHAVAMKUNNU P.O., KALLOORKAD.

2. SRI. MATHEW JOSEPH, AGED 42 YEARS,
S/O. LATE JOSEPH NEDUMKALLEL, NAGAPUZHA,
P.O.KALLOORKAD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.23256 OF 2007 r

Dated this the 31st July, 2007.

JUDGMENT

This writ petition is preferred against an Appeal Election Order 374/06 by the District Judge, Ernakulam. The election petitioner filed an application for the election conducted for ward 10 of Kalloorkkad Grama Panchayat. The sum and substance of the contention is that there was crowd on the table where votes were counted and valid votes polled had been mixed up with the invalid votes and that in spite of a request made by the counting agent the officer rejected the same and declared the result. It is submitted that on account of the same the election petitioner happened to loose the elections. Both the courts below, on appreciation of the evidence available before it, found that there is nothing to interfere with the decision taken by the counting officer. A perusal of the judgments of the courts below would show that the practice adopted was to sort out the classified ballot in separate trays i.e a tray each for the contestant and another for the invalid. Since there was an objection it was subjected to thorough verification and scrutiny. The contention that the table was crowded and that has created confusion has not been found in favour by both the courts

below on appreciation of the evidence. The learned District Judge in para 10 has categorically held that the counting agents will be present only at the counting table of the concerned ward. Hence, on account of the fact that there were a number of persons in the hall counting will not be affected. So the said contention has not been proved by the election petitioner. The election petitioner was not available at that time in the hall and his agent has been examined and the courts below did not give much creditworthiness for his evidence. The court also found that as per the statute it was obligatory on the part of the counting officer to have assigned reasons for rejection. It is only a procedural formality to be complied with. The election manual also makes it clear that the right of a candidate to demand a recount under Rule 51 does mean that recount can be granted for the mere asking. The party who makes a demand for recount has to make a prima facie case and if it is found correct it has to be allowed. In para 12 onwards there is a discussion regarding the lack of evidence to establish the case. The court was satisfied that there has been no such confusion as attempted to be projected by the election petitioner since one court has appraised the entire facts and the appellate court has re-appraised the entire facts and in

this jurisdiction it is not possible to again re-appreciate the materials unless it is found that the courts below had acted perversely and illegally. Here cogent reasons are given to substantiate the view that is taken and there is absolute lack of evidence on the part of the election petitioner to prove his case and in an election petition the quality of evidence must be such that one has to be satisfied that it is sufficient to hold otherwise. So from these discussions I hold that there are no grounds to entertain this writ petition and therefore it is dismissed.

M.N.KRISHNAN
Judge

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